

### **REMARKS**

This is in response to the Office Action mailed September 18, 2007.

Independent claim 1 and its dependent claims 2-12, 14-15, 20, 22-23, and 26-27, and independent claim 24 and its dependent claim 25, are currently pending and at issue. Claims 13, 16-19, 21 and 28 have been withdrawn as being based on non-elected species.

Claims 1 and 24 have been amended. No new matter is introduced. Support for the amendments to the claims can be found throughout the originally filed application, e.g., paragraph 34 and Table 4. Applicants submit this amendment to place the claims in condition for allowance or better condition for Appeal pursuant to 37 C.F.R. § 1.116. Accordingly entry of this amendment is respectfully requested.

#### **Claim Rejections - 35 U.S.C. §112**

The Examiner has rejected claims 1-12, 14, 15 and 20-27 under 35 U.S.C. § 112, first paragraph for lack of enablement. Applicants traverse.

However, solely to expedite prosecution, claims 1 and 24 have been amended to state that the individual is a woman and the one or more servings comprises at least about 57 servings of dairy per month and at least about 773 mg calcium per day.

Based on the above, the Applicants respectfully request that the 112 rejection be withdrawn.

#### **Provisional Double Patenting Rejection**

The Examiner has provisionally rejected claims 1-12, 14, 15 and 20-27 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8-10 of copending Application No. 10/827,301. Applicants traverse this rejection.

However, solely to expedite prosecution, a terminal disclaimer is being submitted with this Response to the Final Office Action. Applicants believe that the submission of a terminal disclaimer places the claims in condition for allowance.

Applicants respectfully request that this rejection be withdrawn.

#### **Claim Rejections - 35 U.S.C. §103(a)**

The Examiner has rejected claims 1-12 and 14-15 under 35 U.S.C. §103(a) as being unpatentable over Lin et al. Applicants respectfully traverse.

Lin et al. has a publication date of December 2000, as shown by the attached Exhibit 1, which is printed from the Journal of the American College of Nutrition website. It notes that Volume 19, Number 6 of this journal is dated December 2000 and contains the Lin reference cited by the Examiner (see p. 2 of printout). The contents of this printout were verified in a telephone conversation with a representative of the Journal of the American College of Nutrition on or about November 26, 2007. The first page of Lin also notes that it was published in Volume 19, Number 6 of this journal.

According to MPEP § 706.02(VI)(A), if the application is a continuation or divisional of one or more earlier U.S. applications or international applications and if the requirements of 35 U.S.C. 120 and 365(c), respectively, have been satisfied, the effective filing date is the same as the earliest filing date in the line of continuation or divisional applications. The current application is a continuation of Application No. 10/066,057, filed April 20, 2004, which is a divisional of Application No. 09/654,357, filed September 1, 2000. The current application thus has an effective filing date of September 1, 2000, which predates the December 2000 publication date of Lin.

Because the present application has an effective filing date that predates the publication date of Lin, Lin is not prior art. Accordingly, Applicants respectfully request withdrawal of the rejection.

**Conclusion**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicants request that the Examiner issue a Notice of Allowance indicating the allowability of claims 1-12, 14, 15, 20, and 22-27 and that the application be passed to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

In view of the above amendment, applicant believes the pending application is in condition for allowance

The Commissioner is authorized to charge any deficiency in any patent application processing fees pursuant to 37 CFR §1.17, including extension of time fees pursuant to 37 CFR §1.17(a)-(d), associated with this communication and to credit any excess payment to Deposit Account No. 22-0261.

Dated: Feb 13, 2008

Respectfully submitted,

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# Exhibit 1

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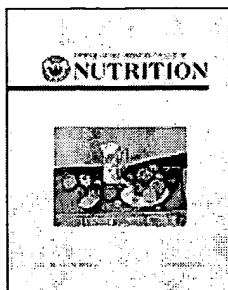
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## REVIEWS ■

- ☐ **Nutrition in Bone Health Revisited: A Story Beyond Calcium**

Jasminka Z. Ilich and Jane E. Kerstetter

J Am Coll Nutr 2000. 19: 715-737. [\[Abstract\]](#) [\[Full Text\]](#) [\[PDF\]](#) [\[Figures Only\]](#)

## ORIGINAL RESEARCH ■

- ☐ **American Ginseng Improves Glycemia in Individuals with Normal Glucose Tolerance: Effect of Dose and Time Escalation**

Vladimir Vuksan, Mark P Stavro, John L Sievenpiper, Vernon YY Koo, Evelyn Wong, Uljana

Beljan-Zdravkovic, Thomas Francis, Alexandra L Jenkins, Lawrence A Leiter, Robert G Josse, and Zheng Xu

J Am Coll Nutr 2000. 19: 738-744. [\[Abstract\]](#) [\[Full Text\]](#) [\[PDF\]](#) [\[Figures Only\]](#)

- ☐ **Responses of Plasma Lipoproteins and Sex Hormones to the Consumption of Lean Fish Incorporated in a Prudent-Type Diet in Normolipidemic Men**

Brigitte Lacaille, Pierre Julien, Yves Deshaies, Charles Lavigne, Louis-D Brun, and H  l  ne Jacques

J Am Coll Nutr 2000. 19: 745-753. [\[Abstract\]](#) [\[Full Text\]](#) [\[PDF\]](#)

- ☐ **Dairy Calcium is Related to Changes in Body Composition during a Two-Year Exercise Intervention in Young Women**  
Yi-Chin Lin, Roseann M. Lyle, Linda D. McCabe, George P. McCabe, Connie M. Weaver, and Dorothy Teegarden  
J Am Coll Nutr 2000. 19: 754-760. [[Abstract](#)] [[Full Text](#)] [[PDF](#)] [[Figures Only](#)]
- ☐ **Effect of Meat Replacement by Tofu on CHD Risk Factors Including Copper Induced LDL Oxidation**  
Emma L. Ashton, Fabien S. Dalais, and Madeleine J. Ball  
J Am Coll Nutr 2000. 19: 761-767. [[Abstract](#)] [[Full Text](#)] [[PDF](#)] [[Figures Only](#)]
- ☐ **The Effect of Lecithin Supplementation on Plasma Choline Concentrations During a Marathon**  
Alan L. Buchman, Mohamed Awal, Donald Jenden, Margareth Roch, and Seung-Ho Kang  
J Am Coll Nutr 2000. 19: 768-770. [[Abstract](#)] [[Full Text](#)] [[PDF](#)]
- ☐ **Revisiting the Picky Eater Phenomenon: Neophobic Behaviors of Young Children**  
Betty Ruth Carruth and Jean D. Skinner  
J Am Coll Nutr 2000. 19: 771-780. [[Abstract](#)] [[Full Text](#)] [[PDF](#)]
- ☐ **Relative Weight, Weight Loss Efforts and Nutrient Intakes among Health-Conscious Vegetarian, Past Vegetarian and Nonvegetarian Women Ages 18 to 50.**  
Susan I. Barr and Terri M. Broughton  
J Am Coll Nutr 2000. 19: 781-788. [[Abstract](#)] [[Full Text](#)] [[PDF](#)]
- ☐ **Double-Blind Controlled Study on the Effects of Dietary Diacylglycerol on Postprandial Serum and Chylomicron Triacylglycerol Responses in Healthy Humans**  
Hiroyuki Taguchi, Hiroyuki Watanabe, Kouji Onizawa, Tomonori Nagao, Naohiro Gotoh, Takuji Yasukawa, Rikio Tsushima, Hiroyuki Shimasaki, and Hiroshige Itakura  
J Am Coll Nutr 2000. 19: 789-796. [[Abstract](#)] [[Full Text](#)] [[PDF](#)] [[Figures Only](#)]
- ☐ **Feeding Tolerance in Preterm Infants: Randomized Trial of Bolus and Continuous Feeding**  
Shaul Dollberg, Jacob Kuint, Ram Mazkereth, and Francis B. Mimouni  
J Am Coll Nutr 2000. 19: 797-800. [[Abstract](#)] [[Full Text](#)] [[PDF](#)]
- ☐ **Development of a Self-Assessment Instrument to Determine Daily Intake and Variability of Dietary Vitamin K**  
R. Rebecca Couris, Gary R. Tataronis, Sarah L. Booth, Gerard E. Dallal, Jeffrey B. Blumberg, and Johanna T. Dwyer  
J Am Coll Nutr 2000. 19: 801-806. [[Abstract](#)] [[Full Text](#)] [[PDF](#)] [[Figures Only](#)]

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